



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,847	12/09/1999	TOAN TRINH	7114	8139
27752	7590	05/04/2004	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL TECHNICAL CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224				MOORE, MARGARET G
ART UNIT		PAPER NUMBER		
		1712		
DATE MAILED: 05/04/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/457,847	TRINH ET AL.	
	Examiner	Art Unit	
	Margaret G. Moore	1712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 March 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 14, 15, 33 to 42, 45 to 50, 56, 60 to 64 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 14, 15, 33 to 42, 45 to 50, 56, 60 to 64 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

Art Unit: 1712

1. The terminal disclaimer filed on 3/30/04 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6,001,343 has been reviewed and is accepted. The terminal disclaimer has been recorded.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 14, 15, 33 to 42, 45 to 50, 56, 60 to 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al.

This rejection is maintained from the previous office action and thus the rationale behind this rejection will not be repeated.

Applicants have amended claim 56 such that the article of manufacture is "in association with a set of instructions to use the composition in an effective amount to provide a solution to problems involving, and/or provision of at least one benefit related to, those selected from the group consisting of: killing, or reducing the level of, micro-organisms; and/or reducing static...". Applicants argue that including such a set of instructions is not mentioned by the prior art.

One on hand, the Examiner notes that she has already detailed why including a set of instructions as to how to use the composition of Vogel et al. would have been obvious. Clearly a wrinkle reducing composition would be supplied to the consumer with a set of instructions on its use. Vogel et al. teach that this composition can include antistatic agents (column 11, line 17) and bactericides, germicides, fungicides (column 12 lines 40 to 50) and antimicrobials (column 17, line 44). These additives are present in the composition of Vogel et al. in an effective amount to provide a solution to, or at least a benefit related to, problems associated therewith. The instructions associated with the article of manufacture in Vogel et al. will provide instructions on how to use the

Art Unit: 1712

composition therein. Since the additives noted supra will be present in an effective amount, the instructions will necessarily teach the use of the composition in an effective amount to provide solutions or benefits related to the additives.

In other words, since the composition contains an effective amount of these additives, and the instructions that would obviously be associated therewith will teach how to use the composition, it directly follows that the instructions will teach using the composition in an effective amount to obtain the benefits and properties associated with the additives. It would be pointless to include the additives in a composition if the instructions for use of the composition did not teach using the composition such that the benefits of the additives are achieved.

On the other hand, the Examiner does not believe that this association with a set of instructions lends any functional weight to the claimed article. Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious. The addition of a new set of instructions into a known article of manufacture does not provide the article any functional limitation. The instructions do not depend on the kit, and the kit does not depend on the instruction. All the printed matter does is teach a new use, or a future intended use, for an existing product. Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability. If the Patent Office were to adopt applicants' position, anyone could continue patenting a product indefinitely provided that they added a new instruction to an existing product.

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1712

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Margaret G. Moore
Primary Examiner
Art Unit 1712

mgm
4/30/04